

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

WILLOW LAKE GAS PLANT
(CRESTWOOD NEW MEXICO) FOR AN
AIR QUALITY PERMIT, NO. 5142-M8

AQB 21-38

HEARING OFFICER'S REPORT

I. INTRODUCTION

On February 19, 2021, Crestwood New Mexico Pipeline LLC ("Crestwood") submitted an application for modifications to its New Source Review Permit ("Application") for the Willow Lake Gas Plant (the "Facility") pursuant to 20.2.72.219.D(1)(a) NMAC. Administrative Record ("AR") at 007. The Application seeks to add the following equipment to the Facility: three compressor engines, a produced water/condensate tank, and a triethylene glycol dehydration unit and associated reboiler at the Willow Lake Compressor Station. AR:039. This additional equipment will increase the gas gathering capacity of the Facility to accommodate increased production from upstream oil and natural gas producers. Exhibit Crestwood-11 at 4. Increasing Crestwood's gas gathering capacity will allow upstream producers to send more gas to the Facility in lieu of flaring or venting the gas in the field, thereby avoiding the carbon dioxide and methane emissions associated with wellhead flaring and venting, resulting in positive environmental benefits. *Id.*

The Application also seeks to revise some of the Facility's existing emission sources. Specifically, to change formaldehyde emissions to account for higher catalyst control efficiency guarantees for seven of the existing compressor engines (i.e., cleaner engine exhaust), increase the volume of liquid throughput going through storage tanks and loaded into tank trucks, increase the volume of gas the Facility may need to control by flaring; and increase the estimate of fugitive components because of the additional equipment added. AR:039.

NMED designated the Application administratively complete on March 18, 2021, and labeled it Permit No. 5142-M8. AR:345. NMED published the Legal Notice and Preliminary Determination (“Notice”) of the Application on March 20, 2021, and a revised Notice on April 22, 2021. AR:361–363. The March 20, 2021 Notice provided the required 30-day public comment period. AR:356–360. The April 22, 2021 Notice included an email address for submission of comments and provided an additional 30-day public comment period (commencing May 28, 2021) in response to a request from WildEarth Guardians (“WEG”). AR:362. In the Notices, NMED concluded the Facility would continue to meet the criteria to be classified as a PSD minor source after Crestwood makes the modifications requested and the Draft Permit is issued. AR:358, 362. WEG filed a request for public hearing in a letter to NMED dated April 16, 2021, which NMED granted. AR:500–503, 510–512.

On September 14, 2021, Crestwood revised portions of the Application to manage an unanticipated increase in condensate at the Facility. AR:583–613. Separately, Crestwood submitted an administrative revision to NMED on September 14, 2021, requesting authorization for four (4) electric powered pumps, which will be used to pump liquids from the produced water/condensate tanks at Willow Lake 1 and the Willow Lake Compressor Station into the Orla Express Pipeline. See Exhibit Crestwood-11 at 6.

These revisions resulted in a further decrease in emissions at the Facility by eliminating tank truck load venting to atmosphere and the control of tank truck vapors from Willow Lake 1 and Willow Lake Compressor Station storage tank offloading. *Id.*

NMED supported the requested revisions and incorporated them into the Draft Permit. NMED sent the revised Draft Permit to WEG on September 21, 2021, and posted it to the NMED website on September 22, 2021. Exhibit NMED 25 at 7. NMED posted the revised Draft

Permit before the 30-day deadline to provide notice of the hearing in accordance with 20.1.4 NMAC. The Hearing Officer combined Crestwood's Draft Permit hearing with permit hearings for XTO and Conoco.

Based on WEG's request for a public hearing and its demonstration of significant public interest in the proposed permit, New Mexico Environment Department Cabinet Secretary, James Kenney ("Cabinet Secretary") granted a public hearing for Crestwood's application 5142-M8 in a Public Hearing Determination dated June 1, 2021. On June 24, 2021, the Cabinet Secretary subsequently ordered a public hearing be held in the matter AQB 21-38 and appointed Gregory Chakalian to serve as Hearing Officer in this matter. Following a July 7, 2021, scheduling conference the Hearing Officer consolidated AQB 21-38 with nine separate cases regarding construction permit applications for nine other oil and gas facilities in southeast New Mexico. The Cabinet Secretary also affixed his signature to a Delegation of Authority on June 25, 2021, transferring all decision-making authority to Deputy Cabinet Secretary of Administration Rebecca Roose.

a. Revision of Construction Permits

A revision of an NSR permit is governed by 20.2.72 NMAC and required for modifications to the Facilities. 20.2.72.200 NMAC. A modification is defined as "any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source, or which results in the emission of any regulated air contaminant not previously emitted . . ."

20.2.72.7.P NMAC.

b. Permit Issuance

After the determination that an application is administratively complete, NMED must decide whether a permit should be granted, granted with conditions, or denied. 20.2.72.207 NMAC. If there is significant public interest, the Secretary may delay issuing the permit and require a hearing be held. *Id.* NMED has specific bases to deny a permit revision. 20.2.72.208 NMAC.

c. Current Proceedings

NMED's Office of General Counsel represented NMED through Christopher J. Vigil. NMED called the following individuals as witnesses: Rhonda Romero, Eric Peters, Angela Raso, Kathleen Primm, James Nellessen, Kirby Olson, Urshula Bajracharya, Vanessa Springer, Asheley Coriz, Julia Kuhn, and Melinda Owens.

COPC was represented by Scott Janoe and Harrison Reback of Baker Botts LLP. COPC called Dr. Roberto Gasparini as a witness. Dr. Gasparini is the Legal, Audit, & Enforcement Support Program Director at Spirit Environmental, LLC in Houston, Texas.

XTO was represented by Louis Rouse and Kristen Burby of Montgomery & Andrews, PA. XTO called Randy Parmley, Vice President, and principal engineer at DiSorbo Consulting, as a witness.

Crestwood was represented by Eric Waeckerlin and Courtney Shephard of Brownstein Hyatt Farber Schreck, LLP. Crestwood called Moshe Wolfe, senior environmental engineer for Crestwood, and Adam Erenstein, principal consultant with Trinity Consultants, as witnesses.

WEG was represented by Matthew Nykiel. WEG called Jeremy Nichols, Climate and Energy Program Director for WEG, as its sole witness.

d. Burdens and Standards for Decision

20.1.4.400.A(1) NMAC establishes the burdens of persuasion for each party to the hearing and states: “Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed. Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” In turn, 20.1.4.400.A(3) NMAC states that “[t]he Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.”

In addition, New Mexico’s minor source permitting regulations at 20.2.72.207.D NMAC state that “[t]he department shall grant the permit, grant the permit subject to conditions, or deny the permit based on information contained in the department’s administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, a statement of matters officially noticed, and if a public hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit revision should be approved.”

The determination of whether to issue a Draft Permit must be based on the evidence in the Hearing Record as defined by 20.1.4.7 NMAC.

e. Public Comment¹

General comment (non-technical) was taken from the public before and during the public hearing, both in writing and as sworn testimony. Five members of the public submitted written

¹ Public comment was taken in reference to all ten (10) permits during the consolidated public hearing.

comment, one in favor and four opposed to the approval of the Draft Permits. The public member in favor cited fairness of rules and regulations for companies to operate in New Mexico. Those against, cited the air quality and ozone levels in Lea and Eddy Counties and the link between air pollution and climate change. Fourteen public members spoke during the two-day hearing (some of the members had also submitted written comment), all voiced their opposition to the air quality construction permits. The reasons mirrored the written comments but more focused on the potential for ozone pollution produced by oil and gas Facilities to harm human health and the environment. The comments were general in nature.

II. APPLICABLE LAW

New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to 74-2-17

New Mexico Air Quality Regulations - Construction Permits, 20.2.72 NMAC

New Mexico Environment Department Permitting Procedures – 20.1.4 NMAC

III. RECOMMENDATION

Based upon the Hearing Record as defined in 20.1.4.7 NMAC, including the post-hearing submittals, I recommend that the proposed final Draft Permit be approved, as set forth in the Record with specific conditions to protect the public health and the environment. What follows is drawn from XTO, NMED, and WEG's proposed findings of fact and conclusions of law based on the evidence that I found relevant, reliable and credible.

IV. FINDINGS OF FACT

The Application

1. Crestwood New Mexico Pipeline, LLC is a Texas-based foreign limited liability company and the owner/operator of the Willow Lake Gas Processing Plant, located in Eddy County, New Mexico, Section 20 and 29 Range 28E, Township 24S, and operating under Permit No. 5142M8. [AR:007-009]; Exhibit Crestwood-11 at 2.

2. The U.S. Environmental Protection Agency (“EPA”) has designated Eddy County, New Mexico as attainment with respect to each criteria pollutant, including for the 8-Hour Ozone National Ambient Air Quality Standard (“NAAQS”). Exhibit NMED-1 at 1–2.
3. The Willow Lake Facility is a gas plant that, depending on its operating mode, compresses, processes, and dehydrates natural gas delivered from oil and gas producers or simply compresses and dehydrates the gas. Exhibit Crestwood-11 at 2–3.
4. The Willow Lake Facility currently operates under new source review (“NSR”) Permit No. 5142-M8. AR:007.
5. On February 19, 2021, Crestwood filed an application to modify its NSR permit pursuant to 20.2.72.219.D(1)(a) NMAC. AR:007.
6. The Application requests to add compressor engines, a produced water/condensate tank, and a triethylene glycol dehydration unit and associated reboiler at the Willow Lake Compressor Station. AR:313.
7. The Application also requests to revise formaldehyde emissions because of higher catalyst control efficiency guarantees for seven of the existing compressor engines; increase the volume of liquid throughput going through storage tanks and loaded into tank trucks; increase the volume of gas the Willow Lake Facility may need to control by flaring; and increase the estimate of fugitive components because of the additional equipment added. AR:313.
8. This additional equipment is necessary to increase the gas gathering capacity of the Willow Lake Facility to accommodate increased production from oil and natural gas producers and avoid venting and flaring gas in the field. Exhibit Crestwood-11 at 4.
9. The Willow Lake Facility, including the modifications requested in the Application, qualifies as a prevention of significant deterioration (“PSD”) “minor” source under New

Mexico's pre-construction regulations because it is in an attainment area and its total emissions do not exceed 250 tons per year. AR:327; *see* 20.2.72.200 NMAC.

10. Beginning on May 21, 2021, the Willow Lake Facility began operating as a Title V "major" source because nitrogen oxide (NO) and carbon monoxide (CO) emissions exceeded 100 tons per year once Crestwood added and began operating the sources authorized by current Permit No. 5142M8. Exhibit Crestwood-11 at 4; *see* 20.2.70 NMAC.

11. Consistent with 20.2.70.300.B NMAC, Crestwood will submit a Title V permit application for the Willow Lake Facility by May 20, 2022. Exhibit Crestwood-11 at 4.

12. The following list indicates which section(s) of the Application complied with the associated 20.2.72.203 NMAC requirement:

- a. 20.2.72.203.A.(2) NMAC: Section 1 – General Facility Information
- b. 20.2.72.203.A.(3) NMAC: Universal Application Form ("UA") 2; Section 6 – All Calculations; and Section 7 – Information Used to Determine Emissions
- c. 20.2.72.203.A.(4) NMAC: Section 13 – Discussion Demonstrating Compliance with Each Applicable State & Federal Regulation; and Section 16 – Air Dispersion Modeling
- d. 20.2.72.203.A.(5) NMAC: Section 14 – Operational Plan to Mitigate Emissions
- e. 20.2.72.203.A.(6) NMAC: Section 8 – Maps
- f. 20.2.72.203.A.(7) NMAC: Section 1-C – Facility Input Capacity & Production Rate; Section 2, Table 2-M – Materials Processed and Produced; Section 4 – Process Flow Sheet; and Section 5 – Plot Plan Drawn to Scale
- g. 20.2.72.203.A.(8) NMAC: Section 2, Table 2-C – Emission Control Equipment; and Section 6 – All Calculations

- h. 20.2.72.203.A.(9) NMAC: Section 6 – All Calculations
 - i. 20.2.72.203.A.(10) NMAC: Section 1-E – Proposed Operating Schedule; Section 10 – Written Description of the Routine Operations of the Facility; and Section 15 – Alternative Operating Scenarios
 - j. 20.2.72.203.A.(11) NMAC: Crestwood submitted all specifically identified relevant information on UA1, UA2, UA3, and UA4
 - k. 20.2.72.203.A.(12) NMAC: Section 22 – Certification
 - l. 20.2.72.203.A.(13) NMAC: UA 1
 - m. 20.2.72.203.A.(14) NMAC: Section 9 – Proof of Public Notice
 - n. 20.2.72.203.A.(15) NMAC: Not applicable
13. On March 18, 2021, New Mexico Environment Department (“NMED”) designated the Application administratively complete and labeled it Draft Permit No. 5142M8 (the “Draft Permit”). NMED Exhibit 25 at 3.
14. Bureau staff began the technical review of the Application after a determination that each application was administratively complete. During the technical review, Bureau staff verified emissions calculations by confirming the correct emission factors and formulas were used in calculating emissions for all sources. If methods were unclear, Bureau staff asked the Permittee’s consultant for further explanation or updates, as necessary. Bureau staff also verified the emissions totals from the calculations matched the emissions totals in Section 2 of the application. NMED Exhibit 25 at 4.
15. Bureau staff reviewed the emission calculations submitted in the Application for all regulated equipment and the respective emission factors relied upon in those calculations. The Facility’s emissions were calculated using Excel spreadsheets using manufacturer’s data sheet

emission factors, Texas Commission on Environmental Quality emission factors, or the United States Environmental Protection Agency's ("EPA") *AP-42 Compilation of Air Emission Factors*, including EPA's *Protocol for Equipment Leak Emission Estimates (EPA-453/R-95-017)*, as well as oil and gas industry software, such as *ProMax®*. NMED Exhibit 25 at 4-5.

16. The Bureau's administrative and technical reviews for the Application are summarized in the Statement of Basis, which is a permitting record that includes: (1) a description and history of the facility; (2) a regulatory applicability review; (3) a compliance discussion; (4) any public response received by the Department; and (5) a summary any unique conditions in the permit. NMED Exhibit 25 at 4, 20.

17. Bureau staff testified that based on the Bureau's administrative and technical review of the Application, the Bureau recommends that the Secretary adopt the Draft Permit. NMED Exhibit 25 at 20.

18. On March 20, 2021, NMED published the Legal Notice and Preliminary Determination of the Application on the NMED website and in the *Carlsbad Current Argus*. AR:356–360. The Legal Notice provided a 30-day public comment period. *Id.*

19. WEG submitted a letter regarding the Application to NMED dated April 16, 2021. AR:500–503. The letter requested that NMED release its full analysis and review of the application, release the draft permit, publish notice of the Application again with an email address for comment submissions and provide for a second 30-day public comment period on the draft permit, and analysis, and provide a public hearing. The letter expressed concern with the legal notice for the Application and asked several questions about whether the Draft Permit would comply with state and federal air quality regulations.

20. On April 22, 2021, NMED published a revised public notice in the *Carlsbad Current Argus* that included an email address for submission of public comments. AR:361–363.

21. On May 28, 2021, NMED mailed a copy of the Draft Permit and the accompanying analysis to WEG. Exhibit NMED-25 at 6.

22. WEG submitted a second letter regarding the Application to NMED dated June 28, 2021. AR:504–509. WEG again requested a public hearing, expressed concerns about public notice and participation, and whether the draft permit would comply with state and federal air quality regulations. WEG also raised the issue of enforceability of startup, shutdown, and maintenance and malfunction limits and environmental justice concerns.

23. NMED’s Air Dispersion Modeling Summary for the Application concluded:

This modeling analysis demonstrates that operation of the facility described in this report neither causes nor contributes to any exceedances of applicable air quality standards. The standards relevant at this facility are NAAQS for CO, NO₂, PM₁₀, PM_{2.5}, and SO₂; NMAAQs for CO, H₂S, NO₂, and SO₂; and Class I and Class II PSD increments for NO₂, PM₁₀, PM_{2.5}, and SO₂.

AR:368.

24. NMED further concluded: “[t]he permit can be issued based on this modeling analysis.”

AR:368.

25. On September 14, 2021, Crestwood revised their application to add a new vapor recovery unit, increase throughput of the tanks and truck loading; the emissions of which were offset by additional control devices (additional vapor recovery unit) and changes to routing of emissions to various existing control devices. The application was reviewed, calculations reviewed and approved. The new changes were incorporated in a new draft of the permit Part A (only) and new draft of the Statement of Basis (version 2021.9.21). NMED Exhibit 25 at 4; AR:466 – 499; AR:400 – 412.

26. Conditions in the Draft Permit are Facility Specific Requirements, unique to the facility. They are site-specific and based on information provided in the applications. Conditions in Part B of the permits are General Conditions and standard language which generally apply to all sources. Part C is also standard language about supporting on-line documents, definitions, and acronyms which apply to all sources. NMED Exhibit 25 at 7-8.

27. The Draft Permit began with standardized language in a Bureau permit template and standardized AQB monitoring protocols added as necessary for the sources of emissions and control devices proposed for the facility. Since all the Application is for modifications to an existing permit, many conditions were already in place but required revision to address respective facility changes. *Id.* at 8.

28. NMED issued Implementation Guidance for Permitting SSM Emissions and Excess Emissions (June 2012), which states, under New Mexico law: “There is no limit on the quantity of SSM emissions that can be permitted, provided they are routine and predictable, and included in applicable air dispersion modeling that demonstrates compliance with State and Federal ambient air quality standards.” Exhibit Crestwood-9 at 2 . The Guidance also states: “Permitting SSM and/or malfunctions does not relieve a permittee from the requirement to minimize SSM and/or malfunction emissions in accordance with 20.2.7.14 and 20.2.7.109 NMAC. Applicants are also required to submit a preliminary operational plan defining the measures to be taken to mitigate source emissions during [SSM] as part of a permit application.” *Id.*

Public Notice of the Hearing

29. The Notice of Hearing was written per requirements in 20.1.4 NMAC. The Notice of Hearing was translated into Spanish by Ana Maria MacDonald, Translation Program Manager for the Department, and was received by the Bureau on September 20, 2021. On September 21,

2021, Notices of Hearing in English and in Spanish were posted on the Department's Docketed Matters page under the Cabinet Secretary dropdown, in the link for the respective docket number and facility name. The notice was also posted on Department's public notice website under the Lea or Eddy County dropdown, in the link for each of the facilities included in the hearing. *See generally* NMED Exhibit 25 at 3.

30. The Notice of Hearing was published in English and in Spanish in three newspapers. Both Notices were published in the Carlsbad Current-Argus on September 22, 2021. Both Notices were published in the Albuquerque Journal on September 23, 2021. Both Notices were published in the Hobbs Daily News-Sun on September 24, 2021. On September 22, 2021, emails with the Notices of Hearing in English and in Spanish attached were sent to individuals and groups that had been previously directly notified about one of the permit applications or that submitted comments on a permit application. *Id.* at 2-3.

31. For the Facility, the notice was sent to the Bureau of Land Management, the Lea County Manager, the Eddy County Manager, the State of NM Land Office, the US EPA, the State of Texas, Carlsbad Caverns National Park, Carlsbad Department of Development ("CDD"), the Village of Loving, and both J. Nichols and M. Nykiel from WEG. These emails included a message informing the recipients the Notices of Hearing along with other information were available for review on NMED's public notice website <https://www.env.nm.gov/public-notices-2/> under the Eddy dropdown, in the link with the name of this facility. *Id.* at 3-7.

Motion in Limine

32. On October 12, 2021, XTO, Crestwood New Mexico Pipeline LLC ("Crestwood"), and ConocoPhillips Company ("ConocoPhillips") submitted a pre-hearing motion in limine requesting that the Hearing Officer issue an order precluding WEG from offering any

documents, testimony, or other evidence related to attainment of the 8-Hour Ozone National Ambient Air Quality Standards (“NAAQS”) in Eddy and Lea Counties and that any of the proposed permitting actions will cause or contribute to a violation of the ozone NAAQS based on the current statuses of the counties (collectively, “the ozone issues”). Joint Motion in Limine, October 12, 2021.

33. On October 20, 2021, the Hearing Officer held a status conference with all parties to clarify scheduling, order of testimony, and when the Hearing Officer would decide the ozone issues given the abbreviated timeline for motion practice outlined by an Order Granting In-Part Stipulation. At the call, it was determined that parties would meet thirty minutes prior to the start of the hearing, where the Hearing Officer would hearing oral argument and issue a decision and reasons in support thereof.

34. WEG filed a response to the Joint Motion in limine on October 22, 2021, requesting the Hearing Officer deny the Joint Motion. WEG Response to Joint Motion, October 22, 2021.

35. Prior to the start of the hearing, the parties’ counsel met with the Hearing Officer to argue the Joint Motion and response. The preliminary matter was transcribed verbatim by the court-reporter and held in a break-out room on the Zoom platform. The Hearing Officer determined that based on the parties stipulated facts and the attached January 2021 EIB decision in 20-21(A) and 20-33(A) (WEG Petitioner/Appellant) on point, testimony on ozone and compliance with the ozone NAAQS was not relevant to the matters at issue in the hearing². The Hearing Officer verbally issued his decision that no testimony related to the ozone issues would be permitted in

²“ I’m going to start with page 22 of the final order, conclusion number 100. Pursuant to long-standing EPA and NMED guidance, for a source to be considered to cause or contribute to ozone concentrations in excess of NAAQS, its impacts on ozone concentrations must be above the Significant Impact Level as established by the EPA. Now, we haven’t even talked about Significant Impact Level because that doesn’t come into consideration until a PSD is in effect, and PSD is not for minor sources. Sources that emit below 250 tons per year of an ozone precursor are minor sources for purposes of the Board’s PSD permitting regulations. Pursuant to EPA guidance, NMED guidance and the Board’s permitting regulations, which we are using today, a permit applicant for a minor source is not required to make an individual demonstration of its impacts on ambient ozone concentrations. So, if a permit applicant for a minor source is not required to make an individual demonstration of its impact on ambient ozone concentrations, then I don’t *See* how it’s relevant to accept evidence to controvert that.” Tr. Vol. 1, 31:17,32:12. (Chakalain).

the hearing. To gain admission into evidence, the parties amended their exhibits to redact the irrelevant testimony. Importantly, unredacted exhibits submitted on October 12, 2021, were received as offers of proof. Tr. Vol. 1, 40:13-19 (Chakalian).

36. A hearing was held on this matter on Monday, October 25, 2021, and continued until Tuesday, October 26, 2021. Tr. Vol. 1, 14:11-16 (Chakalian); Tr. Vol. 2, 289:1-4 (Chakalian).

37. The hearing was held both virtually via ZOOM and at a location in the area affected by the applications and began at approximately 9:00 AM each day. Tr. Vol. 1, 1:23-25 (Court Reporter); Tr. Vol. 2, 283:23-25 (Court Reporter).

Objection to WEG's Technical Testimony

38. WEG's witness Jeremy Nichols, has experience in participating in air quality regulation from the advocacy perspective having provided commentary on numerous rules, permits, and policies at the state and federal levels. Mr. Nichols has some college experience having completed some coursework in Geology and Women's Studies, however he does not hold any college degrees. WEG Ex. 2.

39. Mr. Nichols provided prefiled "technical" testimony on each of the ten facilities, however the issues brought up for each separate facility were substantially similar. To avoid being unduly repetitious, Mr. Nichols consolidated his written testimony as applied to each facility. The issues called out by Mr. Nichols in his written testimony included: issues with legal notice, enforceability of SSM/M emission limits, compliance with Title V, compliance tests, environmental justice, pneumatic controllers, NO₂ ambient air quality standards, lack of a modeling protocol, use a modeling report dated for 2019, legal notice to nearby Carlsbad Caverns, procedural concerns around an issued air permit, and excess emissions. *See* WEG Am. Ex. 1.

40. Mr. Nichols' concluded in his testimony that none of the permit applications nor NMED's proposed permits demonstrate that the permits comply with the requirements in the relevant state and federal statutes and regulations. WEG Am. Ex. 1 at 3.

41. During his testimony an objection was raised seeking to disqualify Mr. Nichols as a technical expert based on his resume. Tr. Vol. 2, 342:20, 346:7. The parties voir dire revealed that Mr. Nichols did not have any technical training that would qualify him to provide an expert opinion or technical testimony regarding air quality, oil, and gas operations (including SSM/M), engineering, or environmental justice. Tr. Vol. 2, 333:17. The Hearing Officer reasoned that based on the definition of technical testimony pursuant to 20.1.4.7.A(22) NMAC ("as "scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing") it was clear that WEG's only witness lacked sufficient background or training to offer specialized, technical testimony on any issue. Further, Mr. Nichols resume made it clear that he does not have a law degree, is not a licensed attorney, and admitted he is not qualified to interpret regulations or otherwise offer legal testimony. Mr. Nichols' testimony was therefore given the weight of "general" comment. *See* 20.1.4.300.B(2) NMAC.

42. Moreover, Mr. Nichols agreed he did not have any specialized training that would elevate his testimony above lay testimony. Tr. Vol. 2, 344:12. To the extent WEG's testimony advances policy arguments, such policy arguments may not serve as a basis to deny a draft permit and do not qualify as "technical testimony." *See* NMAC 2.2.72.208. In sum, the general testimony WEG provided on the issues it did not concede at the hearing failed to provide any evidence against issuing the Draft Permits.

43. Toward the end of the Hearing, a verbal motion was made to strike the entire direct testimony of Mr. Nichols. After hearing additional argument from the parties, the Hearing Officer overruled the objection, reasoning that the parties had ample time to file a timely motion in limine to allow the Hearing Officer the time necessary to consider the drastic remedy.

WEG's Challenges to the Permits

44. At the public hearing in this matter, WEG's witness testified that the Bureau had resolved most of WEG's concerns about the Application and Draft Permit with a few exceptions. The witness explained:

[WEG] provided comments on the initial -- during the initial comment period whereby the Environment Department asks if there's any public interest. We signaled that we were interested and tried to provide some comments, some general comments. When the Environment Department afforded us a second opportunity to comment and provided us a draft permit and statement of basis to review, we submitted further comments, often elaborating on our original letter and original concerns that we raised. And we did that for all these permits . . . we weighed in, we constantly gave the Environment Department information, and flagged our concerns, and now during this hearing we're finally getting some clarity around some of our questions, some of our concerns, and some issues with the permits.

10/26/21 2 Tr. 314:11-21; 315:1-16.

45. WEG's witness testified that the only outstanding challenges to the Draft Permits were "the enforceability of startup, shutdown, maintenance, and malfunction emission limits, and compliance with the Executive Order on Environmental Justice . . ." 10/26/21 2 Tr. 314:11-21; 315:6-316:12.

46. At the hearing, WEG raised concerns about the Bureau's permitting procedures about the issue of environmental justice. WEG's witness testified that:

I mean, our concerns basically boil down to the substance of what environmental justice is, that procedurally the Environment Department may have taken some steps to address environmental justice concerns, but that substantively environmental justice was not achieved, primarily around the issue of cumulative impacts related to ozone pollution, which as we commented, can disproportionately impact people of color and low-income

communities that may be impacted by other sources of industrial air pollution, and therefore are experiencing compound effects related to high ozone, and that those effects should have been addressed as part of their duty to ensure environmental justice.

10/26/21 2 Tr. 317:11-24.

47. An objection was raised to WEG's testimony on the grounds that WEG's witness was not qualified to draw the legal conclusion that the Bureau did not fulfill its duty about the issue of environmental justice. The Hearing Officer sustained the objection. 10/26/21 2 Tr. 341:13-21.

48. WEG raised concerns about how all the draft permits at hearing deal with flaring events.

WEG's witness testified:

One, the startup, shutdown, and maintenance [for all the Draft Permit] emissions related to flaring, which is a common limit in all . . . permits. The concern there is that the number of flaring events or startup, shutdown, maintenance events are not limited such that as a practical matter the annual limits will actually be complied with, that they -- the intention is that those annual limits serve as a backstop, but as a practical matter, because there are no limits on operational parameters to limit the hourly emissions or the number of hourly emissions events, that as a practical matter that backstop is not effective.

The second issue related to those -- enforceability of these limits is related to venting emissions, primarily venting during malfunction events, but there are venting emission limits in relation to other events, as well. The concern there is that the permits do not set forth any kind of methodology or specific requirement for how the companies must measure the volume of VOC emissions. It uses -- the permits use very general language that does not ensure that as a practical matter accurate volumes of VOC emissions will be calculated such that companies will be able to effectively demonstrate compliance with the venting emission limits.

10/26/21 2 Tr. 318:10-319:10.

49. Bureau staff testified that the conditions in the Draft Permit "comply with all air quality regulations and contain demonstrations of compliance for all conditions and emission limits to ensure compliance with Ambient Air Quality Standards. NMED Exhibit 17 at 9.

V. CONCLUSIONS OF LAW

Statutory and Regulatory Framework

1. The New Mexico Air Quality Control Act, NMSA 1978, § 74-2-5.A(1) requires the Environmental Improvement Board (“EIB”) to adopt regulations requiring “a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from [NMED] prior to such construction or modification.” NMSA 1978, § 74-2-7(A)(1).
2. The EIB promulgated 20.2.72.200.A.(2) NMAC, which requires “[a]ny person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification” to obtain a permit.
3. 20.2.72.203.A NMAC governs what an applicant must include in a permit application, requiring the application:
 - (1) Be filled out on the form(s) furnished by the department;
 - (2) State the applicant’s name and address, together with the names and addresses of all owners or operators of the source, and the applicant's state of incorporation or principal registration to do business;
 - (3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed, and estimate maximum potential emissions during malfunction, startup, shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401 NMAC this requirement only applies when the

toxic air pollutant is emitted in such a manner that a permit is required under the provisions of 20.2.72.400 - 20.2.72.499 NMAC;

(4) Contain a regulatory compliance discussion demonstrating compliance with each applicable air quality regulation, ambient air quality standard, prevention of significant deterioration increment, and provision of 20.2.72.400 NMAC - 20.2.72.499 NMAC. The discussion must include an analysis, which may require use of US EPA-approved air dispersion model(s), to (1) demonstrate that emissions from routine operations will not violate any New Mexico or National Ambient Air Quality Standard or prevention of significant deterioration increment, and (2) if required by 20.2.72.400 NMAC - 20.2.72.499 NMAC, estimate ambient concentrations of toxic air pollutants.

(5) Provide a preliminary operational plan defining the measures to be taken to mitigate source emissions during malfunction, startup or shutdown;

(6) Include a topographical map, at least as detailed as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey, showing the exact location and geographical coordinates of the proposed construction, modification or installation of the source;

(7) Include a process flow sheet, including a material balance, and a site diagram of all components and locations of emissions to the atmosphere of the facility which would be involved in routine operations and emissions;

(8) Include a full description, including all calculations of controlled and uncontrolled emissions and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;

- (9) Include a description of the equipment or methods proposed by the applicant to be used for emission measurement;
- (10) State the maximum and standard operating schedules of the source after completion of construction, modification or installation or after permit revision in terms of which and how many hours per day, days per week, days per month and days per year;
- (11) Contain such other specifically identified relevant information as the department may reasonably require;
- (12) Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any;
- (13) Contain payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted;
- (14) Contain documentary proof of applicant's public notice, if applicable, as specified in Subsection B of 20.2.72.203 NMAC; and
- (15) At the sole discretion of the applicant, contain a request for accelerated review of the application.

4. NMED Universal Application Form 3, Section 14 – Operational Plan to Mitigate Emissions states: “By checking this box and certifying this application the permittee certifies that it has developed an Operational Plan to Mitigate Emissions During Startups, Shutdowns, and Emergencies defining the measures to be taken to mitigate source emissions during startups, shutdowns, and emergencies as required by 20.2.70.300.D.5(f) and (g) NMAC. This plan shall be kept on site to be made available to the Department upon request. This plan should not be submitted with this application.” AR:230.

5. Pursuant to NMSA 1978, § 74-2-7.C, NMED may deny an application for a construction permit modification if it appears that the construction: “(a) will not meet applicable standards, rules or requirements of the Air Quality Control Act or the federal act; (b) will cause or contribute to air contaminant levels in excess of a national or state standard or, within the boundaries of a local authority, applicable local ambient air quality standards; or (c) will violate any other provision of the Air Quality Control Act or the federal act.”

6. 20.2.72.208 NMAC further provides that a permit be denied if, “considering emissions after controls:”

A. It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the Air Quality Control Act;

B. The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board;

C. For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

D. The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

E. The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

F. Any provision of the Air Quality Control Act will be violated;

G. It appears that the construction of the new source will not be completed within a reasonable time; or

H. The department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC.

7. The only provisions of 20.2.72.208 NMAC relevant to this Crestwood proceeding are (A), (B), (C), and (F). 20.2.72.208(D) and (E) NMAC provide grounds for denial that only apply to sources categorized as “major” for the purpose of the PSD program. The PSD program applies to major sources or major modifications in attainment areas. Eddy County is an attainment area. If the Willow Lake Facility operates in compliance with the terms and conditions of the Draft Permit, it will not emit more than 250 tons per year of any pollutant regulated under the NAAQS or NMAAQs and therefore is a “minor” source for the purposes of the PSD program.

50. Prior to making any modifications to the Willow Lake Facility, Crestwood must obtain a permit from NMED pursuant to NMSA 1978, § 74-2-7.A.(1) and 20.2.72 NMAC.

8. The Secretary of Environment has jurisdiction over the subject matter of Crestwood’s Application and the parties to this proceeding and is authorized by the Air Quality Control Act to issue or deny air quality construction permits based upon the information submitted in a permit application and relevant information received during a public hearing. NMSA 1978, §§ 74-2-5, - 7.

Standard of Decision

9. As the applicant, Crestwood has the burden to prove that a permit should be issued and the burden does not shift. 20.1.4.400.A(1) NMAC.

10. “The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed.” *Id.*

11. “Any person who contends that a permit condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.” *Id.* Therefore, WEG has burden to affirmatively prove that a challenged permit condition is “inadequate, improper, or invalid.”
12. “The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.” 20.1.4.400.A(3).
13. Crestwood’s Application complies with all applicable requirements of 20.2.72.203 NMAC and all applicable requirements of the Clean Air Act, New Mexico Air Quality Control Act, and applicable NMED regulations for issuance of a modification to a construction permit.
14. The conditions proposed by NMED satisfy the requirements of NMSA 1978, § 74-2-7.D and 20.2.72.210.B NMAC.
15. NMED complied with the requirements of 20.1.4.100 and 20.2.72.206 NMAC in conducting the Hearing.
16. Crestwood complied with all requirements of the Air Quality Control Act, and applicable NMED regulations in filing its Application.
17. Proper notice for the public hearing on Crestwood’s Application was given as required by the Air Quality Control Act, and applicable NMED regulations.
18. NMED fully complied with Executive Order 2005-056 – Environmental Justice by conducting public outreach and the Hearing in English and Spanish and by applying the EPA EJSCREEN tool during its analysis of Crestwood’s Application.
19. WEG provided no evidence to support its assertion that emissions from the Facility will impact any community.

20. Although not legally required to do so because the Facility is a PSD minor source, Crestwood demonstrated that air emissions at the Willow Lake Facility do not and will not cause or contribute to exceedances of NAAQS, NMAAQs, or PSD Increments.
21. The permit conditions NMED proposed in the Draft Permit are necessary and appropriate to protect human health and the environment to ensure compliance with the Air Quality Control Act and all applicable NMED regulations
22. Included in those conditions are legally and practicably enforceable emission limits for SSM/M that are consistent with NMED guidance on SSM/M.
23. WEG did not present any evidence at the Hearing to support any basis for denying a permit under NMSA 1978, § 74-2-7.C or 20.2.72.208 NMAC.
24. The Application, the Hearing, and the administrative record reveal no basis under the Air Quality Control Act or applicable NMED regulations or Executive Order 2005-056 upon which to deny the permit to Crestwood.
25. WEG did not meet its burden to demonstrate that the Draft Permit should be denied under any of the grounds provided in 20.2.72.208 NMAC.
26. Of the two issues WEG did not concede at the Hearing, WEG did not provide any testimony or evidence that it is entitled to relief. Further, WEG did not provide any testimony or evidence that it is entitled to broader relief regarding any of its claims.
27. Issuance of an air quality construction permit to Crestwood, as established by the Application and with the operational limits, controls, requirements, and emission levels in the Draft Permit, is in conformance with the Air Quality Control Act and applicable regulations.

VI. RECOMMENDED FINAL ORDER

A draft Final Order consistent with the recommendations above is attached and incorporated by reference.

Respectfully submitted,

Gregory
Chakalian

Digitally signed by
Gregory Chakalian
Date: 2021.12.27 11:14:34
-07'00'

GREGORY ARA CHAKALIAN
Administrative Law Judge,
Office of Public Facilitation

Certificate of Service

I hereby certify that on December 27, 2021 a copy of the **Hearing Officer's Report** was sent to the persons listed below:

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